

Message Text

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ORIGIN SS-25

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DRAFTED BY :SMSCHWEBEL:MRP

APPROVED BY THE DEPUTY SECRETARY

L:MR. LEIGH

NEA - MR. SOBER

EB:MR. ENDERS (IN DRAFT)

S/S:CABORG

EB-MR. KATZ

----- 084684

P 132312Z FEB 76

FM SECSTATE WASHDC

TO AMEMBASSY KUWAIT PRIORITY

INFO AMEMBASSY LONDON PRIORITY

AMEMBASSY JIDDA

C O N F I D E N T I A L STATE 036469

EXDIS

E.O. 11652:

TAGS:

SUBJECT: GULF OIL COMPANY AGREEMENT WITH KUWAIT AND RESER-
VATION OF U.S. GOVERNMENT RIGHTS

REFS(A)STATE 254892; (B) KUWAIT 04462

1. APPRECIATE REFTEL (B). AFTER FURTHER CONSULTATION
WITH GULF OIL AND BRITISH GOVT, AND THE MOST CAREFUL
CONSIDERATION IN DEPT., AND SUBJECT TO CONFIRMATION BY
DEPT. PER PARA. 4 OF THIS MESSAGE, WE REQUEST CHARGE TO
DELIVER TO GOK, SOON AFTER THE NATIONAL ASSEMBLY APPROVES
THE COMPENSATION AGREEMENT, A NOTE CONTAINED IN PARA. 2
OF THIS MESSAGE AND TO ATTACH TO THAT NOTE THE GENERAL
STATEMENT OF USG POLICY CONTAINED IN PARA. 3 OF THIS
MESSAGE. WHILE THE NOTE AND ITS ATTACHMENTS SHOULD BE
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ACCOMPANIED BY ORAL ASSURANCE THAT IT IS DELIVERED TO

GOK IN FRIENDLIEST SPIRIT, AND IN THE USG'S CONFIDENCE THAT WAY IS OPEN TO CONTINUED FRUITFUL COOPERATION BETWEEN KUWAIT AND GULF, IT SHOULD BE TRANSMITTED NOT AS AN INFORMAL PIECE OF PAPER BUT AS A DIPLOMATIC NOTE.

2. BEGIN TEXT: THE UNITED STATES GOVERNMENT IS GRATIFIED AT THE FACT THAT THE GOVERNMENT OF KUWAIT AND THE GULF OIL CORPORATION HAVE REACHED FINAL AGREEMENT ON THE TERMS OF TRANSFER TO KUWAIT OF PETROLEUM RIGHTS OWNED BY THE GULF OIL CORPORATION IN KUWAIT. WHILE THE UNITED STATES IS OF THE VIEW THAT, UNDER INTERNATIONAL LAW, FOREIGN INVESTORS ARE ENTITLED TO THE FAIR MARKET VALUE OF THEIR INTERESTS IN INSTANCES IN WHICH THOSE INTERESTS ARE TAKEN BY THE HOST GOVERNMENT, THE UNITED STATES GOVERNMENT WELCOMES THE ARRANGEMENTS FOR A CONTINUING COMMERCIAL RELATIONSHIP BETWEEN KUWAIT AND THE GULF OIL CORPORATION AND RECOGNIZES THAT THOSE ARRANGEMENTS BEAR SIGNIFICANTLY AND POSITIVELY UPON THE QUESTION OF COMPENSATION IN THIS CASE. THE UNITED STATES GOVERNMENT CONSEQUENTLY LOOKS UPON THESE ARRANGEMENTS AS AN INTEGRAL PART OF THE UNDERSTANDING REACHED BETWEEN THE GOVERNMENT OF KUWAIT AND THE GULF OIL CORPORATION ON THE TERMS OF TRANSFER TO KUWAIT OF THE REMAINDER OF THE PETROLEUM RIGHTS OWNED BY GULF OIL CORPORATION IN KUWAIT. THE UNITED STATES GOVERNMENT LOOKS FORWARD TO THE IMPLEMENTATION OF THESE ARRANGEMENTS IN ACCORDANCE WITH THEIR PROVISIONS, TO THE MUTUAL BENEFIT OF KUWAIT AND THE GULF OIL CORPORATION, FOR THE TERM OF YEARS SPECIFIED AND ANY EXTENSION THEREOF. THE GENERAL POSITION OF THE USG IN THIS SPHERE WAS RECENTLY REITERATED IN THE ATTACHED STATEMENT OF POLICY ON FOREIGN INVESTMENT AND NATIONALIZATION ISSUED BY THE DEPARTMENT OF STATE ON DECEMBER 30, 1975. END TEXT.

3. YOU SHOULD ATTACH TO THE EMBASSY'S NOTE THE FOLLOWING STATEMENT ISSUED IN WASHINGTON ON DECEMBER 30, 1975, BY THE DEPARTMENT (WITH THE AUTHORIZATION OF THE SECRETARY), NOTING ORALLY THAT IT IS A STATEMENT OF GENERAL APPLICATION WHICH THE U.S. HAS CONFIDENTIAL

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DRAWN OR WILL BE DRAWING TO THE ATTENTION OF OTHER GOVERNMENTS AS WELL. BEGIN TEXT. THERE HAVE BEEN SIGNIFICANT DEVELOPMENTS DURING THE PAST YEAR CONCERNING FOREIGN INVESTMENTS BY U.S. PRIVATE FIRMS. THE SECRETARY AT THE 7TH SPECIAL SESSION ON SEPTEMBER 1 AND AT CIEC DECEMBER 16, EMPHASIZED THE U.S. BELIEF THAT FOREIGN PRIVATE INVESTMENT CAN MAKE A VERY SUBSTANTIAL CONTRIBUTION TO ECONOMIC DEVELOP-

MENT. THERE HAVE ALSO BEEN A NUMBER OF ACTUAL OR

CONTEMPLATED NATIONALIZATIONS INVOLVING U.S. FIRMS, AND ENSUING SETTLEMENT NEGOTIATIONS. IN THESE CIRCUMSTANCES, THE DEPARTMENT WISHES TO REITERATE PERTINENT U.S. POLICY.

THE PRESIDENT OF THE UNITED STATES, IN JANUARY 1972, DREW ATTENTION TO THE IMPORTANCE WHICH THE UNITED STATES ATTACHES TO RESPECT FOR THE PROPERTY RIGHTS OF ITS NATIONALS. HE STATED THAT THE POLICY OF THE UNITED STATES CONCERNING EXPROPRIATORY ACTS INCLUDES THE POSITION THAT: "UNDER INTERNATIONAL LAW, THE UNITED STATES HAS A RIGHT TO EXPECT:

-- THAT ANY TAKING OF AMERICAN PRIVATE PROPERTY WILL BE NONDISCRIMINATORY;

-- THAT IT WILL BE FOR A PUBLIC PURPOSE; AND

-- THAT ITS CITIZENS WILL RECEIVE PROMPT, ADEQUATE, AND EFFECTIVE COMPENSATION FROM THE EXPROPRIATING COUNTRY."

WITH REGARD TO CURRENT OR FUTURE EXPROPRIATIONS OF PROPERTY OR CONTRACTUAL INTERESTS OF U.S. NATIONALS, OR ARRANGEMENTS FOR "PARTICIPATION" IN THOSE INTERESTS BY FOREIGN GOVERNMENTS, THE DEPARTMENT OF STATE WISHES TO PLACE ON RECORD ITS VIEW THAT FOREIGN INVESTORS ARE ENTITLED TO THE FAIR MARKET VALUE OF THEIR INTERESTS. ACCEPTANCE BY U.S. NATIONALS OF LESS THAN FAIR MARKET VALUE DOES NOT CONSTITUTE ACCEPTANCE OF ANY OTHER STANDARD BY THE UNITED STATES GOVERNMENT. AS A CONFIDENTIAL

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SEQUENCE, THE UNITED STATES GOVERNMENT RESERVES ITS RIGHTS TO MAINTAIN INTERNATIONAL CLAIMS FOR WHAT IT REGARDS AS ADEQUATE COMPENSATION UNDER INTERNATIONAL LAW FOR THE INTERESTS NATIONALIZED OR TRANSFERRED. END TEXT.

4. JUST BEFORE DELIVERY, WE SHALL WISH TO RECONFIRM WITH GULF THE TEXT OF THIS NOTE AND THE TIMING OF ITS DELIVERY; ACCORDINGLY, THE NOTE SHOULD BE DELIVERED ONLY UPON EMBASSY'S RECEIPT OF A FURTHER INSTRUCTION TO DELIVER IT. KISSINGER

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